"assisting" is concerned, the fact of possession of such incriminating evidence as the memorandum of stakes is sufficient *prima facie* evidence of assisting and require no aid from any presumption.

Lastly, I am of opinion that the words "in or relating to a lottery" are used in the sense of an adjectival phrase, for want of a simple adjective derived from the word "lottery." In my view the expression "memorandum riddle or record of stakes or wagers in or relating to a lottery" must be read in this light, that is to say, if the memorandum is one of this nature, then the presumption arises. There is no analogy between the adjectival phrase here and the word "stolen" as in stolen property. Upon a charge of dishonestly receiving stolen property, proof of theft of the property is necessary because ordinarily the property stolen contains in itself no evidence that it had been obtained by theft. The memorandum of stakes, however, bears on the face of the document itself sufficient data upon which may properly be formed the conclusion that it is a memorandum of stakes in or relating to a lottery.

In my opininon, therefore, possession by any person of a memorandum of stakes or wagers in or relating to a lottery raises against him a presumption of assisting in a public lottery, which may be rebutted by any explanation casting doubt upon the fact of the memorandum being related to any lottery at all, or to any lottery then in progress. Accordingly the presumption raised by section 11 dispenses with proof of the particular contingency upon which the distribution depends or by which it is determined.

I should add that I have not thought it necessary to refer to the many cases which have been cited to us by the learned Deputy and by Mr. Eusoffe Abdoolcader (who appeared as *amicus curiae* both before Rigby J. and in this reference) for the reason that the point which has been raised appeared never to have been considered before. None of the authorities cited would be really pertinent, and we therefore have to approach the question as *res integra*. We are, however, most grateful to learned Counsel for their painstaking research and industry and for their strong arguments on both sides of the question which have been of the greatest assistance to us.

Question answered.

Solicitors: *Presgrave & Matthews.*

ONG CHIN SENG & ANOR. v. REGINA *

[C. C. A. (Rose C.J., Chua & Wee Chong Jin JJ.)
October 27, 1959]

[Singapore — Criminal Appeal No. 14 of 1959]

Criminal law — Unlawful assembly — Penal Code, ss.141, 149 and 302 — Construction — Whether "or other offence" should be read ejusdem generis with "mischief or criminal trespass" — s.141(3) — "Common object" — Meaning of.

The appellants (the 1st and 4th accused respectively, the 2nd and 3rd being acquitted) were charged with an offence under section 149 of the Penal Code in that they, while being members of an unlawful assembly whose common object was to cause hurt by dangerous weapons, caused the death of one Ong Hock Soon.

Counsel for the appellant contended that the common object alleged i.e. to cause death by dangerous weapons does not expressly come within the ambit of section 141 although it could possibly come under section 141 3rd head. However, the phrase "or other offence" appearing in the third limb of the said section should be read *ejusdem generis* with "mischief or criminal trespass" and causing hurt with dangerous weapons is not within the 3rd head of section 141. Secondly, there was inadequate particularization of the common object in the charge to the extent which gravely prejudiced the defence.

Held: (1) the 3rd head of section 141 is intended to include all offences both against person and property, and not only mischief, trespass and *ejusdem generis*;

(2) failure to specify the common object in a charge under the appropriate section would not be fatal to the trial if it can be shown that there was ample evidence on the record to prove what the common object of the assembly was.

Cases referred to:—

(1) *Ramchandra Narayan Shastri* v. *Emperor* A.I.R. 1931 Bombay 520.
(2) *Dhian Singh & Ors.* v. *Emperor* A.I.R. 1915 Lahore 418.
(3) *R.* v. *Sadla & Ors.*, A.I.R. 1950 Allahabad 418.

COURT OF CRIMINAL APPEAL.

David Marshall for the 1st appellant.

F. B. de Souza for the 2nd appellant.

A. V. Winslow (Solicitor-General) [*A. W. Ghows* (Crown Counsel) with him] for the respondent.

Rose C.J.: Four accused persons were tried at the Assizes on the following charge:—

That you on or about the 9th day of January 1959 at or about 9.30 p.m. outside Seng Wah Open Air Cinema at 9½ m.s. Tamoenis Road, Singapore, were a member of an unlawful assembly whose common object was to cause hurt by dangerous weapons and that while you were a member of that assembly one or more members thereof in the prosecution of the common object of the assembly committed murder by voluntarily causing the death of one Ong Hock Soon an offence which the members of the assembly knew to be likely to be committed in the prosecution of the common object of the assembly and you have by virtue of section 149 of the Penal Code committed an offence punishable under section 302 of the Penal Code (Chapter 119).

The present appellants were the first and fourth accused respectively, the second and third accused being acquitted. The verdicts in each case were by a majority of 6 to 1.

The first point raised on behalf of both appellants is that the charge did not disclose an offence known to the law in that the common object referred to therein is not a common object rendering an assembly unlawful within the meaning of sections 141 and 149 of the Penal Code.

Section 141 provides as follows:—

"An assembly of five or more persons is designated an 'unlawful assembly', if the common object of the persons composing that assembly is —

Firstly — to overawe by criminal force, or show of criminal force, the Legislative or Executive Government of the Colony, or any public servant in the exercise of the lawful power of such public servant; or

Secondly — to resist the execution of any law, or of any legal process; or

* Leave to appeal to the Privy Council was not granted in this case. *Ed. M.L.J.*

Thirdly — to commit any mischief or criminal trespass, or other offence; or

Fourthly — by means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifthly — by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do."

Section 149 provides as follows:—

"If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

In the charge the common object alleged was to cause hurt by dangerous weapons. It is contended that this common object is not expressly mentioned in section 141 of the Code and that the only words under which it could possibly be caught up are "or other offence" contained in the third head in that section.

Learned Counsel for the first appellant, with whose submission learned Counsel for the second appellant associates himself, contends that the *ejusdem generis* rule should apply and that causing hurt with dangerous weapons is not *ejusdem generis* with mischief or criminal trespass.

It seems to us, however, that this is putting too narrow a construction upon the section. Chapter VIII of the Code, within which section 141 falls, relates to "offences against the public tranquillity". The commission of an offence by five or more persons whose common object was to cause hurt by dangerous weapons would seem eminently to fall within the ambit of the Chapter. It is, moreover, of interest, perhaps, to note the comment of Dr. Gour in his book on the Penal Law of India at page 599 of the 6th Edition where he says: "This clause is not free from avoidable ambiguity. It says that an assembly is unlawful, if its common object is 'to commit any mischief or criminal trespass, or other offence'. Now, strictly speaking, the other offence must be *ejusdem generis*; otherwise the preceding enumeration was unnecessary. But the clause is intended to include all offences both against person and property, and not only mischief, criminal trespass and *ejusdem generis*." He proceeds to cite some Indian authorities for his proposition.

We therefore consider that there is no substance in the point. We would add, although this is not the reason for our conclusion, that there have been other cases before the Courts of Singapore in which, (although admittedly the point was not taken) convictions have been recorded in the Assize Courts and upheld on appeal where the common object of the alleged unlawful assembly was similar to that in the current case.

Secondly, learned counsel for the appellant contends that there was inadequate particularization of the common object in the charge to an extent which gravely prejudiced the defence. It seems to us that the test to be applied in these cases is whether substantial prejudice is caused and that must depend upon the evidence actually adduced in the case, and whether that evidence itself demonstrates beyond peradventure what the common object of the unlawful assembly was. The matter is adverted to, in the above sense, in two Indian cases. *Ramchandra Narayan Shastri* v. *Emperor* [1] and *Dhian Singh & Ors.* v. *Emperor* [2]. In the former case it was held that the failure to specify the common object in a charge under the appropriate section would not be fatal to the trial if it can be shown that there was ample evidence on the record to prove what the common object of the assembly was.

In the present case we do not consider that the defect in the charge, if defect it was, caused prejudice to the defence.

The facts of the case are sufficiently set out in the learned Judge's summing-up and it is unnecessary to recapitulate them here.

Learned counsel for the first appellant raised a number of points of criticism both of the conduct of the trial and of the learned trial Judge's summing-up. To deal with the latter first, one of the principal grounds was that prejudice was introduced into the minds of the jury by the various references in the summing-up to the fact that the fight in which the deceased man lost his life was a gang fight, between two opposing groups.

Now, it appears that the persons with whom the deceased man was associated at the relevant time were members of a secret society known as the 08 Secret Society. No evidence was adduced to show, nor did the learned trial Judge suggest, that any of the persons in the group amongst which the four accused were alleged to be, belonged to any secret society. It is difficult to see how the learned Judge could have described the groups of persons involved except by the use of some such collective noun as gang, group, faction or body. Moreover the learned Judge appears to have been alive to this point, when in one passage in his summing-up he uses the phrase "the opposing gang or group or whatever you like to call it".

We are not impressed by the argument that the use of the word "gang" in that connotation would have prejudiced the jury any more than would the use of another collective noun, such as "group" or "faction". We are satisfied that the learned Judge meant no more, and did no more, than endeavour to apply a collective noun to describe a number of persons engaged in an act of violence.

The learned trial Judge was severely criticised for having, at page 142 of the record, intervened in the examination in chief of one of

the principal eye-witnesses Wong Tong Heng referred to throughout the case as Hylam Kia. When asked by learned Crown Counsel whether he could identify any of the people who were fighting against him, the witness replied "I cannot identify any of them." The learned Judge then referred to the fact that the witness had made a different statement to the Magistrate in the Magistrate's Court. Subsequently the witness conceded that he could identify two of the persons amongst the four accused, namely Accused No. 1 (the first appellant) and Accused No. 2.

These questions of identification are always eminently for the jury and we must assume, particularly having heard the addresses of learned counsel for the various accused, that they retained in their minds the circumstances in which the identification of the first appellant by the witness Hylam Kia was made, and the value to be attributed to it.

We do not consider, therefore, that there is anything in this episode which could reasonably be held to invalidate the verdict of the jury.

The point was also taken on behalf of the first appellant that the verdict of the jury was unreasonable in that they acquitted the second and third accused while convicting the first, when the evidence against all three was dependent to some extent upon the same eye-witnesses.

In this connection it is relevant to observe that the second accused was, substantially speaking, quite inadequately identified and the jury may well have acquitted him on that ground. In his case, too, there was no corroborative evidence, such as his being found upon the scene or his having incurred injuries.

There were also distinctions between the evidence against the first and third accused. The first accused (the first appellant) had injuries upon him and from the verdict of the jury it must be assumed that his explanation of how he came by them was not accepted by the jury or did not raise any reasonable doubt in the minds of the jury as to his guilt. Moreover, the alibi that he attempted to establish was based upon different facts to that raised by the third accused.

The identification of the various accused by the prosecution witnesses was, in our opinion, adequately put to the jury in the summing-up at pages 304, 305 and 306. These matters of identification are, as we have already stated in a different context, eminently matters for the consideration of a jury. It sometimes happens that a jury are quite satisfied as to the guilt of a particular accused yet are prepared to give the benefit of some slight doubt to another accused, the case against whom depended, in part, upon the evidence of the same eye-witnesses. Juries are not necessarily completely logical when they allow an accused person the benefit of the doubt. They may, for example, feel a slight doubt in the case of one accused, perhaps because of the better impression he might have created upon them in the witness box or by reason of other matters. A verdict of not guilty means no more, in many cases, than that the jury were not completely satisfied that the accused was guilty. It would, we think, be fallacious to infer in the present case that the jury should reasonably have felt doubt in regard to the identification of the first appellant merely because they may have felt such doubts in regard to the third accused. There is ample evidence on the record which would justify the jury in coming to the conclusion, as regards the first appellant, to which they did. The matters of identification were sufficiently put by the learned trial Judge in his summing-up. Thus we do not consider that the first appellant has established any substantial ground on which we can say that the verdict of guilty against him is inconsistent with the verdict of not guilty as regards the third accused.

There remains the question of contradictions and discrepancies. The trial in the Court below lasted several days and the record ran to 328 pages. There were, not unnaturally, numerous contradictions and discrepancies not only between one witness and another but between what the same witnesses said on different occasions. These matters, again, are eminently for the jury's consideration. They were, in our opinion, sufficiently brought to the attention of the jury in the summing-up and we are quite unable to say that their verdict indicated that they had not given sufficient weight to them. The summing-up of the learned trial Judge indicated, and no doubt strongly, his own view of the evidence of several of the prosecution witnesses, but, bearing in mind that he quite clearly put to the jury that they were the sole judges of fact and that they were entitled and indeed it was their duty to disregard any opinions expressed by him of the facts, we do not consider that there was anything in the summing-up of which it could properly be said that the learned trial Judge had erred in law.

As regards the first appellant therefore his appeal fails and his conviction must be affirmed.

Apart from associating himself with the submissions of learned counsel for the first appellant, learned counsel for the second appellant takes a further point which requires consideration.

It is contended that one of the elements which is required by section 149 of the Code is that each accused person must be a member of the unlawful assembly "at the time of the committing of the offence". It is suggested that in the present case, having regard to the injuries to the head sustained by the second appellant, that it is at least possible that he was incapacitated before the relevant time and therefore could not be held to be responsible for the murder of the deceased.

No doubt there may be cases in which an accused person may either by injury, or by removing himself from the scene, have been sufficiently dissociated from the common object of the unlawful assembly. Learned counsel for the second appellant referred to an Indian case

Rex v. *Sadla & Ors.* [3] in which this situation was discussed.

The question that we have to consider is whether in this particular case any such consideration arose and whether, if it did, the matter was sufficiently put to the jury by the learned trial Judge. The matter is dealt with at pages 323 and 324 of the summing-up. The relevant passage reads as follows:—

"Foreman of Jury: May I request guidance on one point of law which has been raised ?

His Lordship: Indeed, Mr. Foreman.

Foreman of Jury: Counsel for accused No. 4 has indicated that it is for the Jury to decide that his client is not a member of the unlawful assembly who caused death to the deceased. According to a similar case heard in India, they must find that Accused No. 4 is not guilty at the time the blow was delivered.

His Lordship: Perhaps I can explain that that would arise only on his own evidence. If you have a reasonable doubt about the matter (let me put it that way) as to whether he was out of action before this fight had really started, then, of course, he would not be a member of the unlawful assembly at the time when the deceased was killed.

Foreman of Jury: This places the burden of proof on the defence, isn't it ?

His Lordship: No, no, no, on the contrary if you have a reasonable doubt in the matter. The Prosecution must always satisfy you. I am sorry but I thought I made it clear that you have got to be satisfied that first of all the four accused were members of this unlawful assembly, and that they were, in fact, actively taking part in this fight. If the Prosecution leave you in any doubt at all — for instance as regards the fourth accused as to whether he was actually taking part in this fight which ensued — if you are left in any doubt about the matter, he is entitled to the benefit of that doubt and you must acquit him. There is no onus on the accused or any of them to do anything as you heard me advising them when they have to make their defence that they can remain in the dock and keep silent. The Prosecution have got to prove every ingredient of the charge up to the hilt. If there is any doubt about the matter, then the accused must have it."

It is to be noted that the learned Judge pointed out to the jury that if they had a reasonable doubt as to whether the second appellant was "out of action before this fight had really started" then he would not be a member of the unlawful assembly at the time when the deceased was killed.

Again he says that if the prosecution left them in any doubt at all "for instance as regards the fourth accused as to whether he was taking part in this fight which ensued" the accused was entitled to the benefit of that doubt.

At page 308 of the summing-up the learned Judge pointed out to the jury that "This incident, which we have been told about, must quite clearly have occurred very suddenly, have taken a very short space of time, and have subsided almost as quickly as it had begun".

Having regard to that version of the picture, which we regard as a fair version, it seems to us that the point at issue as to whether or not the second appellant at the relevant time still shared the common object was sufficiently and clearly put to the jury.

The jury by their verdict answered that question adversely to the second appellant and in our opinion nothing has been established before us to invalidate their decision.

No question of alibi arises in the case of this appellant, as he was admittedly found, with injuries, in the vicinity of the struggle.

In his case, too, therefore, his appeal fails and his conviction must be confirmed.

Appeal dismissed.

Solicitors: *Marshall & Smith; de Souza & Christopher.*

Re LEE YEW SENG

[O. Cr. J. (Rose C.J.) November 27, 1959]

[Singapore — Habeas Corpus No. 2 of 1959]

Constitutional law — Habeas corpus — Detention under Criminal Law (Temporary Provisions) Ordinance, 1955 — ss.41, 48 and 52 — Constitution of Advisory Committees — Criminal Law (Advisory Committee) Rules, 1958, r.3 — Whether ultra vires and in conflict with natural justice.

Interpretation — "Every order . . . shall . . . be referred by" — Meaning of "refer".

This was an application under section 375 of Criminal Procedure Code (Cap. 132) for a writ of *habeas corpus*. The Court granted an order *nisi* directing the Minister of Home Affairs and the Commissioner of Police, Singapore to show cause why the applicant should not be set at liberty. In their affidavits they stated that the applicant was detained under the Criminal Law (Temporary Provisions) Ordinance, 1955.

It was contended for the applicant (1) that the 2 Advisory Committees were not properly appointed in that there was no official notice of their appointment in the Government Gazette; (2) that there was no provision in the Ordinance for the appointment of a Secretary; (3) that Rule 3 of the Criminal Law (Advisory Committee) Rules, 1958 dealing with the constitution of the Advisory Committee was *ultra vires* the Ordinance — Rule 3 of the Ordinance provides that every Advisory Committee should consist of a Chairman, an alternate Chairman and a panel of members. The applicant contended that once an Advisory Committee has been appointed, the whole body must meet for the purpose of deciding any matter referred to them under section 48(4) and that there was no sufficient reference to the Advisory Committee within the meaning of section 48.

Held: (1) there is no statutory provision for public notification of these Advisory Committees. Para. 4 of the Minister's affidavit has set out the name of the Chairman of each committee and the name of the Secretary, and para. 5 mentions that the members of the Advisory Committees are averse to having their identities known. In view of this, there was no reason to question the validity of the appointments of both committees;

(2) although the only mention of a Secretary in the relevant legislation is in the Schedule attached to the Criminal Law (Advisory Committee) Rules 1958, such an appointment far from being in conflict with the Ordinance, is in fact necessary for the efficient working of the Committees;

(3) had Rule 3(3) provided that the Advisory Committee could be composed of a Chairman, or any member of the committee, sitting alone, that would have been contrary to the spirit and manifest intention of the Ordinance and therefore *ultra vires*, for section 51 specifically provides that each of the Advisory Committees must consist of not less than 2 persons. The fact that there were more than 2 persons of whom 3